

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #99-07**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of business tax to seasonal dealer.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] sells [PRODUCT] on a seasonal basis in over fifty locations in Tennessee. The Taxpayer sells [PRODUCT] for about two weeks each year. The taxpayer has a permanent location in Tennessee.

ISSUE

Whether the Taxpayer must register for the business tax in each location where it does business seasonally.

RULING

The Taxpayer must register to do business where it is permanently located, but is not required to register in each location where it does business.

ANALYSIS

Tenn. Code Ann. § 67-4-705 imposes the business tax on the “engaging in any business, business activity, vocation, or occupation,” subject to several exceptions. The making of retail sales is specifically taxable under Tenn. Code Ann. § 67-4-708(2). Therefore, the Taxpayer is subject to the business tax.

Tenn. Comp. R. & Regs. 1320-4-5-.28 provides in part that

(1) The Business Tax is applicable to each place, location or outlet in the state from which business is carried on. This means that a business which engages in business activity in several places, in different locations, and through different outlets, must pay the minimum tax on each place, location, or outlet; and it must report gross sales and tax due for each separate location. . . .

(2). . . [P]ersons subject to the Business Tax operating from an established place of business in one county who extend their operation into other counties and/or municipalities without establishing an office, headquarters or other place of business therein shall not be subject to the Business Tax in such other counties/municipalities. Tax on total receipts from all taxable sales shall be due to the county and municipality, if any, in which the established place of business is located.

The term “established place of business” is not defined in the business tax statutes or rules. Black’s Law Dictionary defines it with respect to federal patent

infringement lawsuits brought in the district where the defendant has an established place of business, providing that

a “regular” place of business is one where business is carried on regularly, and not temporarily, or for some special work or particular transaction, while an “established” place of business must be a permanent place of business and a “regular and established place of business” is one where the same business in kind, if not in degree, as that done at the home office or principal place of business, is carried on.

The Taxpayer has, however, a permanent and established place of business in Tennessee. Therefore, at a minimum, the Taxpayer must register for business tax in its established location. Based on the above definition, the locations where the Taxpayer conducts business for two weeks are neither regular nor established places of business.

A transient vendor is defined as “any person who brings into temporary premises and exhibits stocks of merchandise to the public for the purpose of selling or offering to sell the merchandise to the public . . .” Tenn. Code Ann. § 67-4-702(a)(17). In lieu of paying the business tax on gross receipts, transient vendors pay a \$50 business license fee for each two week period during which they do business in a particular location. Tenn. Code Ann. § 67-4-709(a)(6).

The Taxpayer both has an established place of business and acts as a transient vendor in other locations. Without considering the permanent location in Tennessee, it appears that the Taxpayer is a transient vendor, eligible to pay the \$50.00 minimum fee for a business tax license for each temporary location instead of paying the tax on its gross receipts.

Tenn. Comp. R. & Regs. 1320-4-5-.28(2) applies, however, when taxpayers have an established place of business in one location and “extend their operation into other counties and/or municipalities without establishing an office, headquarters or other place of business therein.” The Taxpayer extends its operations into other areas of the state, although for a limited time period each year, without establishing an office, headquarters, or place of business in those temporary locations. Accordingly, the rule applies and business tax from the gross receipts of the temporary locations is calculated on the rate of the county and municipality, if applicable, of the permanent location.

Therefore, the Taxpayer must register for the business tax in the county and municipality, if applicable, of its permanent location, and must remit business tax on all its gross receipts statewide at the rate of that location.

This Ruling is binding on the Department, but not on the local taxing authorities.

Caroline R. Krivacka, Tax Counsel

APPROVED: Ruth E. Johnson, Commissioner

DATE: 3-17-99